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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 16 of General Assembly resolution 64/115. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 64/115, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-fifth session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224 and A/64/225), the Chairman of the Security Council Informal Working Group on General Issues of Sanctions transmitted the report of the Working Group to the Security Council (see S/2006/997, annex). Several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring; however, the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Council decided that the Working Group had fulfilled its mandate as contained in document S/2005/841, and took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them as well.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. In the period under review, and again in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, no sanctions committees were approached by Member States with regard to special economic problems arising from the implementation of sanctions.[1]

5. In nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[2] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and

[1] It may be noted here that, in a 90-day report delivered on 28 June 2010, the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006) informed the Council that the Committee had responded to a written request for guidance from a Member State in connection with the disposal of arms-related materiel found on-board a vessel that was being transferred in violation of paragraph 5 of resolution 1747 (2007) (see S/PV.6344). The request was submitted owing to human resources demands being placed on that Member State's authorities in providing continuous surveillance of the arms-related materiel.

[2] See Security Council resolutions 1452 (2002), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1737 (2006), 1844 (2008) and 1907 (2009).

reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

6. Furthermore, in paragraph 15 of its resolution 1737 (2006), the Security Council decided that the assets freeze imposed under the same resolution would not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that the conditions set out in subparagraphs 15 (a) and (b) had been met, and after notification by the relevant States to the Committee established pursuant to resolution 1737 (2006) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

7. Through his 90-day reports to the Security Council, prepared in accordance with paragraph 18 (h) of resolution 1737 (2006), the Chairman of the Committee informed the Council of a total of 40 notifications submitted pursuant to paragraph 15, which did not require a Committee decision, of the receipt of payment or the unfreezing of assets in connection with contracts entered into prior to the listing of certain entities.[1] Thus, the provisions contained in paragraph 15 of resolution 1737 (2006), as well as the exceptions to the assets freeze for basic and extraordinary expenses,[2] can help to mitigate economic burdens arising from the implementation of Council assets freezes.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

8. Pursuant to paragraph 7 of General Assembly resolution 59/45, the Assembly and the Economic and Social Council have continued to play their respective roles in the area of assistance to third States affected by the application of sanctions.

A. General Assembly

9. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 1 to 9 March 2010. The report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions (A/65/33, chap. III.A).

B. Economic and Social Council

10. Pursuant to its decision 2000/32, the Economic and Social Council decided to include, in the general segment of the agenda of its substantive session of 2010,

[1] See S/PV.5702, 5743, 5807, 5853, 5909, 5973, 6142, 6235 and 6280. The 90-day report of 9 September 2009, which is also relevant, was not delivered at a public meeting; however, the text is available on the Committee's website: http://www.un.org/sc/committees/1737.

sub-item 13 (i), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 21 July 2010 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

11. In accordance with the relevant resolutions of the General Assembly,[4] the competent units within the Secretariat have maintained their capacity to compile and evaluate information pertaining to any special economic problems in third States arising from the application of sanctions and to evaluate any appeals to the Security Council made by such affected third States under the provisions of Article 50 of the Charter of the United Nations.

12. One of the objectives of such monitoring and evaluation exercises is to develop and strengthen capacity within the Department of Economic and Social Affairs to refine and improve the modalities, technical procedures and guidelines for the coordination of technical assistance to affected third States (A/64/225, para. 12). However, the shift from comprehensive economic sanctions to targeted sanctions in recent years has reduced the occurrence of unintended harm to third States: no State has appealed for the remedy and relief of economic problems arising from application of sanctions to the Security Council since June 2003.

13. As reported previously, the shift to targeted financial sanctions, focused arms embargoes and travel sanctions is designed to minimize the economic, social and humanitarian impact in targeted as well as non-targeted countries, if implemented properly. The shift also requires significant changes in the methodology used to assess the economic problems of third States affected by sanctions. This would involve detailed case-by-case assessments of targeted sanctions and the possible adverse economic, social and humanitarian impact in individual countries, both those that were targeted and those that were not. This approach is reflected, for example, in the report of the Working Group (S/2006/997, annex). The Sanctions Assessment Handbook published by the Office for the Coordination of Humanitarian Affairs also includes elements contributing to the refinement of the methodology to develop, implement and assess the impact of targeted sanctions.[5]

14. In the absence of appeals to the Security Council under Article 50, however, little progress has been made since 2002 in applying and further developing specific methodologies to make the required impact assessments. The Department of Economic and Social Affairs will, nevertheless, continue to seek opportunities for collaborative work with other relevant parts of the Secretariat, as well as other international organizations and academic institutions, to stay abreast of similar and related methodologies for assessing the impact of sanctions in general in order to be responsive when appeals are made.

[4] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127 and 64/115.

[5] Available from www.humanitarianinfo.org/sanctions.handbook.